

## **REMARKS**

### **Amendments**

#### ***Amendments to the Claims***

Applicant has amended independent claims 1, 7, 9, 15 to more particularly point out that a third-party initiates the transaction between a consumer and a primary merchant, and selects the auxiliary merchant(s) when the primary merchant cannot complete the transaction. No new matter has been added as a result of these amendments.

### **Rejections**

#### ***Rejections under 35 U.S.C. § 103***

#### **Claims 1, 2, 4, 5, 7-10, 12, 13, 15, 16, 18 and 20-23**

Claims 1, 2, 4, 5, 7-10, 12, 13, 15, 16, 18, and 20-23 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent 5,592,3373 to Cameron et al. in view of U.S. Patent 6,272,472 to Danneels et al. Applicant reserves the right to challenge the designation of Danneels as prior art because Danneels issued after Applicant's filing date. Nonetheless, Applicant respectfully submits that the combination of Cameron and Danneels cannot render Applicant's invention obvious because the combination does not teach each and every element of the invention as claimed in claims 1, 2, 4, 5, 7-10, 12, 13, 15, 16, 18, and 20-23.

Cameron discloses a computerized order entry system that substitutes a comparable item from a different vendor when the item from a vendor selected by a user is unavailable. Danneels discloses a dynamic linking system that presents items from a reseller's web site on the web site of a supplier.

Applicant's invention as claimed in amended independent claims 1, 7, 9, 15 claims a third party in addition to a consumer, a primary merchant and a auxiliary merchant. The third party initiates a transaction between an access device associated with the consumer and the primary merchant. If the primary merchant is unable to complete the transaction, one or more auxiliary merchants are selected by the third party. Neither Cameron nor Danneels teaches or suggests a third party as claimed by Applicant and therefore the

combination cannot be interpreted as doing so. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 1, 2, 4, 5, 7-10, 12, 13, 15, 16, 18, and 20-23 under 35 U.S.C. § 103(a) over the combination.

#### **Claims 6, 14, and 19**

The Examiner rejected claims 1-23 over the base combination of Cameron and Danneels in view of U.S. Patent 6,029,141 to Bezos et al., stating that the combination of Cameron and Danneels does not teach paying a referral fee but that Bezos does. However, only claims 6, 14 and 19 claim a referral fee. Therefore, Applicant believes the Examiner intended to reject claims 6, 14 and 19, and not all the pending claims, over the combination of Cameron, Danneels and Bezos. Because claims 6, 14 and 19 depend from independent claims 1, 9 and 15, respectively, the Bezos must teach the claimed elements that are missing from the base combination to have a *prima facie* case of obviousness.

Bezos discloses a computerized referral system in which associates recommend products from selected vendors to consumers and receive compensation from the merchants when the consumers complete a purchase based on the recommendation. Bezos does not teach or suggest a third party as claimed by Applicant in claims 1, 9 and 15. Accordingly, the combination Cameron, Danneels and Bezos does not render obvious Applicant's invention as claimed in claims 6, 14 and 19 that depend from claims 1, 9 and 15, and Applicant respectfully requests the withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) over the combination.

#### **Claims 3, 11 and 17**

The Examiner did not specifically reject claims 3, 11 and 17 but Applicant believes the Examiner intended to reject the claims under 35 U.S.C. § 103(a) over the base combination of Cameron and Danneels in view of Official Notice that it would be obvious to provide network consumers an electronic receipt in lieu of a paper receipt. Claims 3, 11 and 17 depend from claims 1, 9 and 15, respectively. Because the base combination does not teach each and every limitation of claims 1, 9 and 15, and the Examiner's assertion of Official Notice does teach or suggest the claimed elements that are missing in the base combination, claims 3, 11 and 17 are not rendered obvious by the

combination of Cameron, Danneels and the recited Official Notice. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 3, 11 and 17 under 35 U.S.C. § 103(a) over the combination of Cameron, Danneels and Official Notice.

### **SUMMARY**

As a result of this preliminary amendment, claims 1-23 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Sue Holloway at (408) 720-3476.

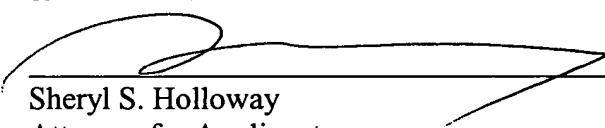
### **Deposit Account Authorization**

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

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